

A. G. Contract No. KR92-2633TRN
ECS File: JPA 92-115
Project: RRP-000-6(50)P
TRACS: 0940 GI GGI SR058 01C
Section: Claypool, Oak St @ Arizona
Eastern Railway Co.
AAR/DOT No. 742-369-H

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
GILA COUNTY, ARIZONA

THIS AGREEMENT is entered into 4 December, 1992, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and GILA COUNTY, ARIZONA, acting by and through its Board of Supervisors (the "County").

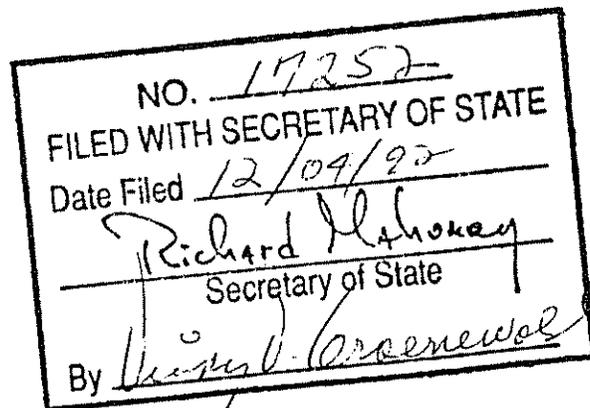
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.

4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.



5. Such project within the boundary of the County has been selected by the County; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced in this agreement and the estimated cost are as follows: Furnish and Install Flashing Lights

Preliminary and Construction Engineering	= \$	3,000.00
Furnish & Install Flashing Light Signals and Automatic Gates (AERR)	= \$	77,542.00
Total Project	= \$	80,542.00
Federal Aid Funds at 90%	= \$	72,488.00
AZ Corp. Comm. Funds @ 10%	= \$	8,054.00
Gila County Funds	= \$	0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. When such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way has been acquired.

3. The County shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the County.

5. Upon completion of construction, the County shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The County shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The County assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.
2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.
3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.
4. This agreement shall become effective upon filing with the Secretary of State.
5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Room 222E, Mail Drop 616E
Phoenix, AZ 85007

Gila County
County Manager
1400 E. Ash Street
Globe, AZ 85501

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

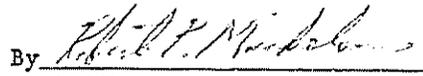
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

GILA COUNTY, ARIZONA

STATE OF ARIZONA
Department of Transportation

By 

EDWARD G. GUERRERO, Member
Gila County Board of Supervisors

By 

ROBERT P. MICKELSON
Deputy State Engineer

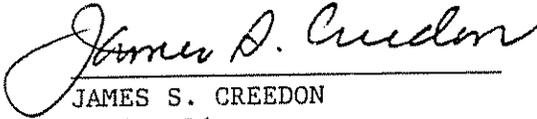
ATTEST:

By 
Janice Cook, Deputy
Clerk

RESOLUTION

BE IT RESOLVED on this 16th day of September 1992, that I, JAMES S. CREEDON, as Acting Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with Gila County for the purpose of defining responsibilities for the design, construction and maintenance of railroad crossing improvements on Oak Street in Claypool at the Eastern railroad crossing.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



JAMES S. CREEDON
Acting Director

ARIZONA DEPARTMENT OF TRANSPORTATION
RAIL-HIGHWAY IMPROVEMENT PROGRAM
SPONSOR AUTHORIZATION FORM

Railroad Crossing Location 3rd Street (Claypool)

Railroad Company // AAR/DOT No. ARIZONA EASTERN RAILWAY COMPANY // 742-371-J

Project No. RRP-000-6(70)P
TRACS No. 940 GI GGI SR080 01C

SCOPE OF WORK

ESTIMATED COST

Furnish and install Flashing Lights and Automatic Gates	\$ 86,400.00
Preliminary and Construction Engineering	\$ 3,000.00
	= \$ 89,400.00
 Furnish and install timber grade crossing surface	 \$ 21,600.00
Subtotal	= \$111,000.00
Federal-Aid funds @ 90%	= \$ 99,900.00
Az Corporation Commission funds @ 10% of \$ 89,400.00	= \$ 8,940.00
Gila County funds @ 10% of \$21,600.00	= \$ 2,160.00
	=====

I certify that the crossing described, is on a public road under the jurisdiction of Gila County.

Gila County requests that the Arizona Department of Transportation initiate the project on our behalf, to request the necessary Federal-aid and Arizona Corporation Commission funding for the referenced project.

Date: November 18, 1992

Name: 

Title: Director

Signature: C. ROBERT BIGANDO

JPA 92-115

APPROVAL OF THE GILA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreements, between the STATE OF ARIZONA, acting through the DEPARTMENT OF TRANSPORTATION and GILA COUNTY, and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

DATED this 13 day of November, 1992.



County Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR92-2633-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 1st day of December, 1992.

GRANT WOODS
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath".

JAMES R. REDPATH
Assistant Attorney General
Transportation Section